

David M. Crosby, Esq.  
Nevada Bar #3499  
CROSBY & ASSOCIATES  
711 South Eighth Street  
Las Vegas, Nevada 89101  
Phone: (702) 382-2600  
Attorneys for Debtor(s)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In the matter of:

Oscar Arnaldo Orellana and  
Elvira Orellana  
Debtors.

Case No: BK-09-25412-BAM  
Chapter 13

Date: 1-7-10  
Time: 2:30 p.m.

**MOTION TO VALUE DEBTORS' NON-PRINCIPAL RESIDENCE REAL  
PROPERTY, AND TO MODIFY THE RIGHTS OF PARTIALLY SECURED  
LIENHOLDER(S) AND OBJECTION TO LIENHOLDERS'  
PROOFS OF CLAIM, IF ANY**

Come Now, Debtors, Oscar Arnaldo Orellana and Elvira Orellana, by and through their legal counsel, David M. Crosby, Esq., of the law firm Crosby & Associates, who respectfully moves this Court to value Debtors' non-principal residence, determine the lien of CitiMortgage, Inc. to be partially unsecured, and modify the rights of said creditor accordingly including determining the claims pursuant to any proof(s) of claim which such lienholder may have filed or may yet file to be unsecured where there is insufficient equity in the residence to secure more than a portion of the first lien.

This Motion is brought pursuant to 11 U.S.C. §502(a), §506(a), §1322(b)(2), and Bankruptcy Rules 3012 and 9014, the Points and Authorities set forth below and

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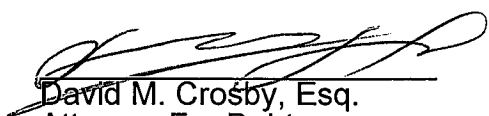
///

all documents and pleadings on file herein.

Dated this 20 day of November, 2009.

CROSBY & ASSOCIATES

By:

  
David M. Crosby, Esq.  
Attorney For Debtors

-----  
**POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS**

1. Debtors filed a Chapter 13 petition in United States Bankruptcy Court, District of Nevada on August 21, 2009.

2. On the date of the petition, Debtors were the owners of real property used as a rental property known and described as 2735 San Vicente Street, Las Vegas, Nevada 89115 (Exhibit "1") legally described as follows:

Lot Twenty (20) in Block Five (5) of Holiday Park No. 10, as shown by Map thereof on File in Book 15 of Plats, Page 52, in the Office of the County Recorder of Clark County, Nevada.

APN: 140-18-310-010

3. The value of said real property at the time his Chapter 13 Petition was filed was \$41,605.00 as set forth more particularly in an internet appraisal of subject property (Exhibit "2").

4. Said property at the time of filing was subject to the following liens evidenced by Promissory Note and Deed of Trust:

1 First Mortgage: (Exhibit "3")  
 2 America's Servicing, Co \$ 167,997.00  
 3 7495 New Horizon Way  
 Frederick, MD 21703-8388  
 Loan # XXXXXX2713

4 Junior Mortgage: (Exhibit "4")  
 5 CitiMortgage, Inc \$ 41,451.00  
 6 P.O.Box 9438  
 Gaithersburg, MD 20898  
 Loan # XXXXXX7099

7  
 8 5. As of the date Debtors' Chapter 13 Petition was filed no equity existed in  
 9 said property above the amount of the appraisal value of \$ 41,605.00 thereby leaving  
 10 the loan to CitiMortgage, Inc as secured only to the extent of the value of the property.  
 11 If said property were foreclosed or otherwise sold at auction on the date of the petition,  
 12 there would be insufficient proceeds to pay the entire loan to CitiMortgage, Inc .

13 6. Debtors declare that the claim of CitiMortgage, Inc is unsecured in excess  
 14 of \$ 41,605.00 such that all such unsecured debt should be reclassified as unsecured  
 15 to share pro rata with other general unsecured creditors through the debtor's Chapter  
 16 13 plan with any proof(s) of claim filed by it modified accordingly to document their  
 17 portion of the claim as unsecured, and that the lien of CitiMortgage, Inc be modified  
 18 accordingly by order of the Court.

## 19 II.

### 20 LEGAL ARGUMENT

#### 21 **A. The Restrictions of 11 U.S.C. § 1322(b)(2) Do Not Apply to Real Property Which is Not Debtor's Principal Residence.**

22 11 U.S.C. §1322(b)((2) does not apply to this property as it is not Debtor's  
 23 principal residence. That section provides:

24 (b) Subject to subsections (a) and (c) of this section, the  
 25 plan may—

26 \* \* \* \* \*

27 (2) modify the rights of holders of secured  
 28 claims, other than a claim secured only by a

security interest that is secured by an interest  
in real property that is the debtor's principal  
residence, .....

**B. The Claims by Lienholders May be Bifurcated into Secured and Unsecured Claims Pursuant to 11 U.S.C. §506(a).**

11 USC§ 506(a)(1) provides in pertinent part:

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim.

In re Zimmer, 313 F.3d 1220, 1221 (9th Cir.2002), accepted what was the majority view in the various circuits, that a wholly unsecured lienholder is not entitled to the protection of 11 U.S.C. §1322(b)(2). The Court stated that a wholly unsecured lienholder's claim can be modified and reclassified as a general unsecured claim pursuant to 11 U.S.C. §506(a).

**C. Any Proof of Claim Filed by Named Lienholders Should be Conformed by Order of This Court to any Modification of Their Rights Determined by This Court.**

11 U.S.C. §502 provides that a claim of interest represented by proper Proof of Claim filed pursuant to section 501 is deemed allowed unless objected to. Debtor herewith objects to any and all Proof(s) of Claim which may have been filed by CitiMortgage, Inc and request that any Proof(s) of Claim of same representing such claim be modified accordingly to an unsecured claim consistent with the Order of this Court determining their claim to be partially secured in the case of the first lien.

III.

CONCLUSION

Debtors request determination of value of Debtors' non-principal residence real property to be less than the amount of the first lien and argues that the claim of CitiMortgage, Inc be modified, stripped down and reduced to the actual value of the property; that the unsecured portion of said claim be reclassified as a general unsecured claim to be paid pro rata with other general unsecured creditors through the debtors' Chapter 13 plan and that any Proof of Claim of the lienholder be modified consistent with the actual value of the property.

WHEREFORE, Debtor prays that this Court:

1. Determine the value of Debtors' non-principal residence to be \$41,605.00 or such other amount as the evidence may justify as of the date of the Petition; and
2. Avoid and extinguish the second lien of CitiMortgage, Inc. as wholly unsecured lien pursuant to 11 U.S.C. Section 506(a) upon completion of the Debtor's Chapter 13 plan; and
3. Modify the first lien of America's Servicing, Co. as secured only to the extent of the actual value of the property as of the date of the Petition to be paid through the Chapter 13 Plan; and
4. Reclassify the second claim of CitiMortgage, Inc. and the non-secured portion of CitiMortgage, Inc's claim as a general unsecured claims to be paid pro rata with other general unsecured creditors through the Debtors' Chapter 13 plan; and
5. Conform any Proof(s) of Claim filed by the claim of CitiMortgage, Inc. to the secured/unsecured status of said claims as determined by this Court; and

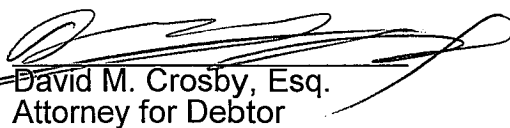
6. Order such other relief as the Court may deem appropriate.

Dated this 30 day of November, 2009.

Respectfully Submitted:

CROSBY & ASSOCIATES

By:

  
David M. Crosby, Esq.  
Attorney for Debtor

20020114  
00737

20  
Affix R. P. T. T. \$215.00  
Parcel Number: 140 18 310 010

**GRANT, BARGAIN, SALE DEED**

THIS INDENTURE WITNESSETH: That  
FORTUNE HOLDING GROUP, A Nevada Corporation  
FOR A VALUABLE CONSIDERATION, the receipt of which is hereby  
acknowledged, do hereby Grant, Bargain, Sell and Convey to:  
OSCAR A. ORELLANA, A married man as his sole and separate property

all that real property situated in the County of Clark, State of Nevada, bounded and  
described as follows:

Lot Twenty (20) in Block Five (5) of HOLIDAY PARK NO. 10 as shown by map  
thereof on file in Book 15 of Plats, page 52, in the Office of the County Recorder of  
Clark County, Nevada.

SUBJECT TO:

1. Taxes for the fiscal year 2001 and 2002
2. Covenants, conditions, reservations, rights, rights of way,  
easements, now of record.

Together with all and singular the tenements, hereditaments and appurtenances  
thereunto belonging or in anywise appertaining.

FORTUNE HOLDING GROUP  
*Sharon Wilson*  
Sharon Wilson, PRESIDENT

STATE OF NEVADA }  
COUNTY OF CLARK ) ss.

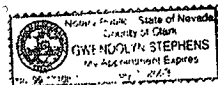
On January 9, 2002  
personally appeared before me, a Notary  
Public (or judge or other authorized person,  
as the case may be):  
Sharon Wilson  
personally known (or proved) to me to be the  
person whose name is subscribed to the above  
instrument who acknowledged that he  
executed the instrument.

Send Tax Statements To

ESCROW NO. 44461 GS  
STERLING ESCROW  
WHEN RECORDED MAIL.  
Mr. Oscar A. Orellana  
2735 San Vicente Street  
Las Vegas, NV 89115

*Sharon Wilson*  
Signature

(NOTARIAL SEAL)



CLARK COUNTY, NEVADA  
JUDITH A. VANDEVER, RECORDER  
RECORDED AT REQUEST OF

NOTARIAL TITLE COMPANY  
01 14 2002 00117 REC  
BOOK 0020114 INST 00707  
FEE 14.00 APPT 15.00

EXHIBIT

**STATE OF NEVADA  
DECLARATION OF VALUE**

20020114  
00707

**1. Assessor Parcel Number(s)**

a) 140 18 310 010  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

**FOR RECORDERS OPTIONAL USE ONLY**

Document/Instrument # \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
Date of Recording \_\_\_\_\_  
Notes \_\_\_\_\_

**2. Type of Property:**

a) ☐ Vacant Land  
b) ☒ Single Fam. Res.  
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex  
e) ☐ Apt. Bldg f) ☐ Comm/Vind1  
g) ☐ Agricultural h) ☐ Mobile Home  
i) ☐ Other \_\_\_\_\_

**3. Total Value/Sales Price of Property**

Deed in Lieu of Foreclosure Only (Value of Property) \$ 86,000.00  
Transfer Tax Value \$ 86,000.00  
Real Property Transfer Tax Due \$ 215.00

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_  
b. Explain Reason for Exemption \_\_\_\_\_

**5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %**

The undersigned, declares and acknowledges, under penalty of perjury, pursuant to NRS.375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Sharon Wilson Capacity President  
Sharon Wilson

Signature Oscar Orellana Capacity \_\_\_\_\_  
Oscar Orellana

**SELLER (GRANTOR) INFORMATION**

(Required)  
Print Name: SHARON WILSON  
Address: 1604 S. RAINBOW  
City: LAS VEGAS  
State: NV Zip: 89146

**BUYER (GRANTEE) INFORMATION**

(Required)  
Print Name: OSCAR ORELLANA  
Address: 2735 SAN VICENTE STREET  
City: LAS VEGAS  
State: NV Zip: 89115

**COMPANY/PERSON REQUESTING RECORDING (REQUIRED IF NOT THE SELLER OR BUYER)**

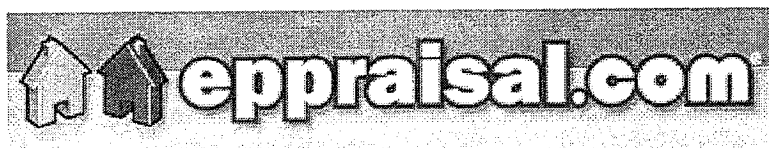
Print name: STERLING ESCROW Escrow # 44461 GS  
Address: 2725 S. Jones Blvd.  
City: Las Vegas State: Nevada Zip: 89148

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

COPY

707





Street Address

Home Values

Local Info

Find a Pro

2735 San Vincente St Las Vegas, NV 89115

Home Details | Recently Sold Homes | Similar Homes for Sale | Home Values | Schools



### Estimated Home Values:

**\$41,605**

Low \$35,364 - High \$47,845

**Zillow.com** \$117,500

**cyberhomes** \$106,742

Help



Add to favorites



Find a Pro

## Home Details

Public Record

User Edits (Login or Register to edit.)

Bedrooms: 2

Bedrooms: N/A

Bathrooms: 2.00

Bathrooms: N/A

Square Footage: 837

Square Footage: N/A

Year Built: 1980

Year Built: N/A

La  
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Se  
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Home Details

Con  
Rea

**EXHIBIT**

AMEF  
1080 I  
Las V

(702)  
 Visit I

**What's My House Worth?**

Find your home's current market value online with HouseValues.com.  
 www.HouseValues.com



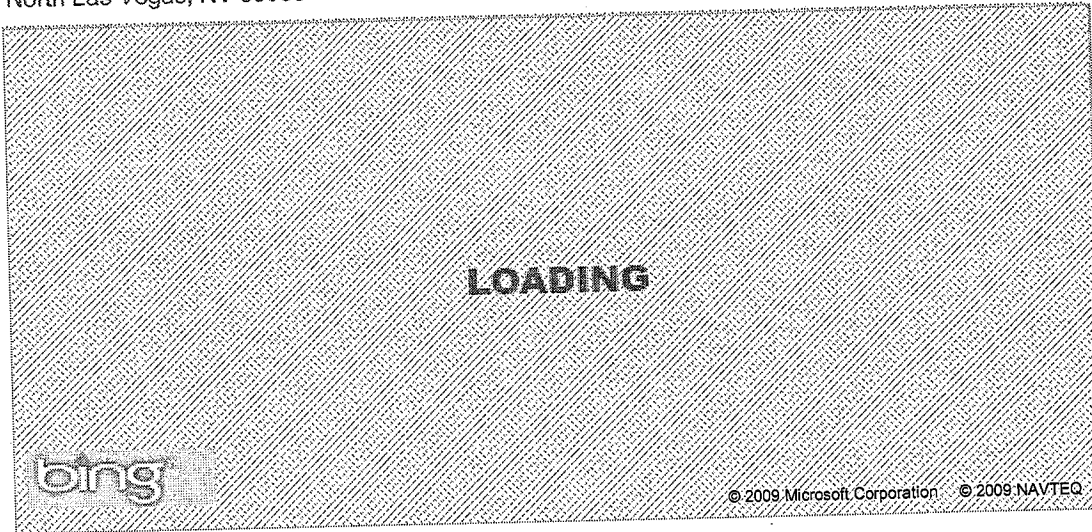
Ads by Google

Recently Sold Homes

Similar Homes for Sale

**Recently Sold Homes**

Address	Sales Price	Sale Date	Bed/Bath	Sq. Ft.
2715 Ventura Way North Las Vegas, NV 89030	\$36,500	4/8/2009	2/1	768
2724 Ventura Way North Las Vegas, NV 89030	\$32,000	4/20/2009	2/1	768
2725 Soledad Way North Las Vegas, NV 89030	\$25,000	4/6/2009	2/1	768
3709 Reseda Cir North Las Vegas, NV 89030	\$40,000	5/18/2009	3/1	864
3717 Reseda Cir North Las Vegas, NV 89030	\$49,900	11/17/2008	2/1	768



Recent Sales

**Las Vegas, NV Home Values**

Home Value Trending

☒ What's This

- ☐ Local
- ☐ State
- ☐ National

Nea

Curre

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•  
•  
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www.fmrk

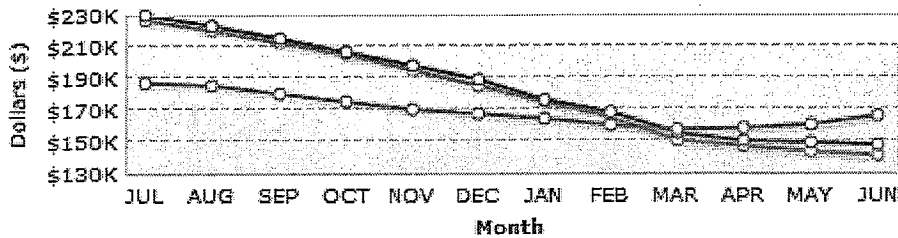
891

3751



2469





Home Data (as of June )

Median Sales Price: \$140,900 -2% (from last month)

Number of Sales: 2119

Las Vegas Home Values

## Las Vegas Schools

Public School District: Clark County School District

School Name	Level	Distance (miles)	Grades
Jay W. Jeffers Elementary School	Elementary School	0.39	PK, K-5
Education Von Tobel Middle School	Middle School	0.28	6-8
Community College High School-East	High School	0.70	11-12

Las Vegas schools

## Las Vegas Real Estate Directory



Are you a real estate professional?  
Join our directory. It's FREE!

Real Estate Agent

Barbara Richie

Address: 1333 N. Buffalo Dr., Ste. 190 Las Vegas, NV 89128

Cell Phone: 7025215299

Las Vegas Real Estate Agents

891

Popu

Medi

Famil

Medi

2735 San Vin  
NV. 2735 Sar  
feet. 2735 Sa  
bathrooms.

Nearby Cities:

- Las Ve
- North L
- Las Ve
- Hender

Las Vegas R

- Las Ve
- Las Ve
- Las Ve

Other Las Ve

- Las Ve
- Las Ve
- Las Ve
- Las Ve

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Return Mail Operations  
PO Box 10388  
Des Moines, IA 50306-0388

## Monthly Mortgage Statement

Statement Date 08/27/08  
Loan Number 1127138696

## Customer Service

Online  
[www.mortgageaccountonline.com](http://www.mortgageaccountonline.com)

Telephone  
800-842-7654

Hours of Operation  
Mon - Fri, 8 AM - 6 PM.  
in your time zone

Fax  
866-453-6315

Payments  
PO Box 60768  
Los Angeles CA 90060

Correspondence  
PO Box 10328  
Des Moines IA 50306



000092 1 AT 0.346 0092-000092 000183 001 01 ACN04P 166 012

OSCAR A ORELLANA  
1483 MINER WAY  
LAS VEGAS NV 89104-5405



## Important Messages

## Summary

Payment (Principal and/or Interest, Escrow)	\$1,139.96	Property Address	2735 SAN VICENTE ST LAS VEGAS NV 89115
Optional Product(s)	\$0.00	Unpaid Principal Balance	\$167,997.54
Current Monthly Payment 10/01/08	\$1,139.96	(Contact Customer Service for your payoff balance)	
Overdue Payments	\$0.00	Interest Rate	7.375%
Unpaid Late Charge(s)	\$0.00	Interest Paid Year-to-Date	\$8,259.84
Other Charges	\$0.00	Taxes Paid Year-to-Date	\$416.32
TOTAL PAYMENT DUE 10/01/08	\$1,139.96	Escrow Balance	\$114.09

## Activity Since Your Last Statement

Date	Description	Total	Principal	Interest	Escrow	Late Charge	Other
08/27	PAYMENT	\$1,139.96		\$1,032.48	\$107.48		

000092/000183 ACN04P 0092 CTM1C091 1



Please detach and return with your payment

Loan Number 1127138696  
Total Payment Due 10/01/08 \$1,139.96  
After 10/16/08 Add Late Fee \$51.62  
Total Amount Due After 10/16/08 \$1,191.58

Check here and see  
reverse for address  
correction.

OSCAR A ORELLANA

0092-000092/000183 001 01 ACN04P 166 012



AMERICA'S SERVICING CO.  
PO BOX 60768  
LOS ANGELES CA 90060-0768



EXHIBIT 3

2000-02-01 01:17 SINDY 17026497413 >> 702 382 1921 106 1127138696 9 10000113996011915801139960000000 0000000001997006391 8

# Account Information

Statement Date: 09/01/08

Property Address: 2735 SAN VICENTE ST  
LAS VEGAS NV 89115-0000

ACCOUNT NUMBER: 0770990559-5

Type of Mortgage FRHEL W/15 YR BLN  
Principal Balance \$41,451.95  
Interest Rate 10.25000%  
Interest Year to Date \$2,839.22

citimortgage

Page 1 of 2

## MORTGAGE ACCOUNT STATEMENT

Take command of your mortgage - Visit Today!  
[www.citimortgage.com](http://www.citimortgage.com)

Customer service 1-800-283-7918  
\*Calls are randomly monitored and recorded to ensure quality service.

Would you like an easier way to make your mortgage payment?  
Sign up for E-Z Pay today.

SIS0071D-264302452008AH04-09/01/08-137-009509-1

OSCAR A ORELLANA  
1483 MINER WAY  
LAS VEGAS NV 89104-5405

## Account Activity

	PAYMENTS RECEIVED	CURRENT PAYMENT DUE
Date	08/26/08	10/01/08
Principal	\$22.10	\$22.29
Interest	\$354.26	\$354.07
Total Amount	\$376.36	\$376.36

For routine questions regarding the servicing of your mortgage loan, please call our Customer Service department at 1-800-283-7918.

If you have a complaint or concern that you have been subjected to unfair lending practices in relation to a mortgage loan or other financial product or service that you obtained through our company or a third party, please call our Fair Lending Hotline at 1-866-369-1054.

## Monthly Highlights

To continue to provide you with excellent service, CitiMortgage has extended our Customer Service hours. Please feel free to contact us about your mortgage during our new extended hours: Monday through Friday from 7:00 a.m. to 12:00 Midnight Eastern Time, Saturday from 8:00 a.m. to 7:00 p.m. Eastern Time, and Sunday from 12:00 Noon to 11:00 p.m. Eastern Time.

Apply for the Citi Cash Returns Card.  
Most ways to earn, easiest to redeem -  
It's Automatic! Visit [www.cardsoffer.citicards.com](http://www.cardsoffer.citicards.com)  
And enter offer code R82.

Account Number: 0770990559-5

OSCAR A ORELLANA

Please designate how you want us to apply any additional funds.  
Undesignated funds first pay outstanding late charges and fees, then principal. Once paid, additional funds cannot be returned.

- ☐ Please check box to indicate mailing address/phone number changes and enter on reverse side.

Include account number on check and make payable to:

|||||  
CITIMORTGAGE, INC.  
PO BOX 6006  
THE LAKES NV 89901-6006  
|||||

	Due Date:	Total Amount Due:
See detail below	10/01/08	\$376.36
Additional Principal:	\$	
Additional Escrow:	\$	
If payment received after: 10/18/08	\$	
Add late charge of: \$18.81	\$	
Additional Monthly Payment:	\$	
Total Amount Enclosed	\$	

EXHIBIT 4

Please do not send cash. Please allow 7 to 10 days for postal delivery.  
To ensure timely processing of your mortgage payment, please use the enclosed envelope and coupon. Do not include account number with your payment.

007709905595 0000037636 0000039517 0000037636



**Account Information**

Statement Date: 09/01/08  
 Property Address: 2735 SAN VINCENTE ST  
 LAS VEGAS NV 89115-0000

ACCOUNT NUMBER: 0770890559-5

Type of Mortgage: FRHEL W/15 YR BLN  
 Principal Balance: \$41,451.95  
 Interest Rate: 10.25000%  
 Interest Year to Date: \$2,839.22

Page 1 of 2

**citimortgage****MORTGAGE ACCOUNT STATEMENT**

Take command of your mortgage - Visit Today!  
[www.citimortgage.com](http://www.citimortgage.com)

Customer service 1-800-283-7918\*

\*Calls are randomly monitored and recorded to ensure quality service.

Would you like an easier way to make your mortgage payment?  
 Sign up for E-Z Pay today.

SIS0071D-264302452008AH04-09/01/08-137-009509-1

OSCAR A ORELLANA  
 1483 MINER WAY  
 LAS VEGAS NV 89104-5405

**Account Activity**

	PAYMENTS RECEIVED	CURRENT PAYMENT DUE
Date	08/26/08	10/01/08
Principal	\$22.10	\$22.29
Interest	\$354.26	\$354.07
<b>Total Amount</b>	<b>\$376.36</b>	<b>\$376.36</b>

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**Monthly Highlights**

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Apply for the Citi Cash Returns Card.

Most ways to earn, easiest to redeem -

It's Automatic! Visit [www.cardsoffer.citicards.com](http://www.cardsoffer.citicards.com)

And enter offer code R82.

Account Number: 0770890559-5

**OSCAR A ORELLANA**

Please designate how you want us to apply any additional funds.  
 Undesignated funds first pay outstanding late charges and fees, then principal. Once paid, additional funds cannot be returned.

- ☐ Please check box to indicate mailing address/phone number changes and enter on reverse side.  
 Include account number on check and make payable to:

CITIMORTGAGE, INC.

PO BOX 6006

THE LAKES NV 88901-6006

	Due Date	Total Amount Due:
See detail below	10/01/08	\$376.36
Additional Principal:	\$	
Additional Escrow:	\$	
If payment received after: 10/16/08	\$	
Add late charge of: \$18.81	\$	
Additional Monthly Payment:	\$	
Total Amount Enclosed	\$	

Please do not send cash. Please allow 7 to 10 days for postal delivery.

To ensure timely processing of your mortgage payment, please use the enclosed envelope and coupon. Do not include account inquiries with your payment.

YNNYNNNNNNNNNN  
 264302450095090001

Citi - 33REG-0708